

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

*In Re: Platinum And Palladium Commodities
Litigation*

This Document Relates To:

Platinum/Palladium Physical Action

Master File No. 10 Civ. 3617 (WHP)

~~Proposed~~ Second Amended Order
Granting Physical Plaintiffs' Motion for
Order To Distribute Settlement Funds
(Moore Settlement)

Hon. William H. Pauley III

WHEREAS, the Court previously granted final approval (ECF No. 295) of the Stipulation and Agreement of Settlement between the Physical Plaintiffs (“Plaintiffs”), the Moore Defendants¹ and defendant Joseph Welsh (“Moore Settlement”) (ECF No. 168);

WHEREAS, the Court-appointed Settlement Administrator, A.B. Data, Ltd. (“AB Data”), has made its determinations concerning proofs of claims submitted by persons seeking to share in the net settlement proceeds from the Moore Settlement;

WHEREAS, on July 27, 2018 Plaintiffs filed a motion seeking approval for a distribution of the net settlement funds (“Distribution Motion”);

WHEREAS, the Distribution Motion and its supporting papers, including AB Data’s final determinations, have been posted on the official website for the Moore Settlement;

WHEREAS, the Distribution Motion noted that Corning Incorporated’s (“Corning”) claim had been denied;

WHEREAS, under the Distribution Motion, the Moore Defendants would receive a reversionary distribution of \$4,460,180.26;

WHEREAS, Corning filed an objection to the Distribution Motion;

WHEREAS, Corning was the only member of the Physical Class to timely file an objection to the Distribution Motion;

WHEREAS, on December 27, 2018, the Court ordered the parties and Corning to mediate Corning’s objection before Professor Francis McGovern;

WHEREAS, the mediation took place in person on January 22, 2019, and was followed by numerous telephone calls and correspondence between and among counsel for the class,

¹ The “Moore Defendants” are Defendants Moore Capital Management, LP, Moore Capital Management, LLC, Moore Capital Advisors, LLC, Moore Advisors, Ltd., Moore Macro Fund, LP, Moore Global Fixed Income Master Fund, LP, and Louis Bacon.

counsel for Corning, counsel for the Moore Defendants and the Mediator;

WHEREAS, as a result of the arm's-length mediation process, the Physical Plaintiffs, the Physical Class, the Moore Defendants and Corning reached agreement to resolve Corning's objection;

WHEREAS, a copy of the Stipulation and Agreement of Settlement between and among the Physical Plaintiffs, the Physical Class, the Moore Defendants and Corning, dated January 31, 2019, reflecting the agreement reached through mediation (the "Stipulation") was filed with the Court on January 31, 2019;

WHEREAS, the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court approves the administrative determinations of the Court-appointed Settlement Administrator, AB Data, concerning the proofs of claim submitted by claimants as set forth in the declaration of Eric J. Miller of AB Data dated July 27, 2018 ("Miller Distribution Declaration") and submitted in connection with the Distribution Motion, as modified by the Stipulation.

2. The Court further finds the determinations made by AB Data with respect to proofs of claim and the distribution of the Net Settlement Fund for the Moore Settlement based on AB Data's calculations and determinations, as modified by the Stipulation, are all fair, reasonable and adequate to the Physical Class and are hereby approved.

3. Accordingly, the Court directs the distribution of the Net Settlement Fund for the Moore Settlement—after deducting the amounts referenced in ¶¶ 4-7 below—to the claimants who have submitted the ~~140~~ claims which AB Data has determined to be eligible to share in the

Net Settlement Fund for the Moore Settlement and in such shares as set forth in the Miller Distribution Declaration, as modified by the Stipulation, and to Corning and to the Moore Defendants as set forth in the Stipulation. Upon receipt of that distribution, Corning's objection is hereby resolved.

4. The Court hereby approves payment of incentive awards from the Settlement Fund for the Moore Settlement to the two Court-appointed representatives of the Physical Class—Frederick DeVito and Russell W. Andrews—in an aggregate amount of \$25,000. The Court finds such award fair, reasonable, and adequate.

5. The Court hereby approves payment of \$95,862.40 from the Settlement Fund for the Moore Settlement to the Court-appointed Settlement Administrator, AB Data, for the balance of its outstanding fees and expenses incurred in connection with its provision of notice to the Physical Class and administration of the Moore Settlement. The Court further approves payment of up to an additional \$24,740.93 in fees and expenses from the Settlement Fund for the Moore Settlement to AB Data, which AB Data estimates it will incur as a result of effecting the distribution of the Net Settlement Fund for the Moore Settlement pursuant to this Order and otherwise finalizing the administration of the Moore Settlement. If AB Data incurs fees and expenses in amount less than \$24,740.93, then the remaining funds shall revert back to the settlement fund and be made available for further distribution. *See ¶ 10 below.*

6. As provided in the Stipulation, no reversion payment will be due to the Moore Defendants. As provided in the Stipulation, the Moore Defendants have been assigned \$425,000 of Corning's award and that payment will be made to the Moore Defendants at the same time payment is made to Corning and other Physical Class members.

7. The Court hereby approves a "reserve fund" in the amount of \$100,000.

8. As soon as practicable, the Clerk of the Court is directed to disburse funds to AB Data from the Court Registry Investment System ("CRIS") account previously established for the Physical Action in the amount of \$6,088,417.20, plus 77.60% of interest income earned on the total amount deposited into the Physical Class CRIS account, less 10% of any such interest income that shall be retained as an investment fee pursuant to Local Civil Rule 67.1. The foregoing disbursement shall be made by check payable to "Platinum and Palladium Physical Lit. – Moore QSF." The check shall be sent via overnight Federal Express to AB Data, Ltd. at the following address:

Platinum Palladium Commodities Litigation Settlement
c/o A.B. Data, Ltd.
Attn. Betty Janusz, Accounting Supervisor
600 AB Data Drive
Milwaukee, WI 53217

AB Data shall act as escrow agent for the settlement funds that are the subject of this paragraph for the benefit of the Physical Class and pursuant to the previously executed escrow agreement dated July 24, 2014 and attached as exhibit C to the Moore Settlement.

9. As soon as practicable after receipt of the settlement funds that are the subject of ¶ 8 above, AB Data shall disburse such funds as directed by ¶¶ 3-6 of this Order. Specifically:

- a. AB Data shall disburse an aggregate payment of \$25,000 to the two class representatives (*see* ¶ 4 above);
- b. AB Data shall disburse a payment of \$10,886.58 for mediator's fees and expenses;
- c. AB Data shall disburse a payment of \$95,862.40 to itself (*see* ¶ 5 above) and may reserve \$24,740.93 for purposes of future payments as set forth in ¶ 5 above;
- d. AB Data shall withhold from distribution and retain \$100,000 in

settlements funds as a "reserve fund"; and

e. The remaining settlement funds in the escrow account shall be distributed to the claimants who have submitted claims which AB Data has determined to be eligible to share in the Net Settlement Fund for the Moore Settlement, to Corning, and to the Moore Defendants in such shares as set forth in the Miller Distribution Declaration as amended by the Stipulation. Claimants who have submitted eligible claims with NAP will recover 95% of their NAP Calculation as set forth in the Miller Distribution Declaration from the distribution of the M.F. Global and Moore settlement funds.

10. In the event the distribution contemplated by this Order does not result in a full and final distribution of all settlement funds associated with the Moore Settlement, the balance will be distributed to Corning as outlined in the Stipulation.

11. The Court hereby bars any further claims against the settlement fund created by the Moore Settlement.

12. AB Data and Physical Lead Counsel are directed to execute this Order and shall not be liable to Class members for any reason in executing and complying with this Order.

IT IS SO ORDERED.

SO ORDERED:

DATED: July 18, 2019


WILLIAM H. PAULEY III
U.S.D.J.

The orders docketed at ECF Nos. 380 and 389 are hereby vacated.
